IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION No.355 OF 2006

Prakash Vamarao Yadav .. ..Petitioner

Versus

Arun Abhimanyu Sadabase & Ors. .. ..Respondents

Mr.P.S.Dani for petitioners

Mr.Rajeshirke i/b S.S.Salunkhe for respondent no.2

CORAM : S. C. DHARMADHIKARI, J

DATE : 23RD FEBRUARY, 2006

P.C.:

1. This writ petition is filed under Article 227 of the Constitution of India to challenge the order passed by the lower appellate court on an application made for Stay in the pending Civil Appeal.

2. The petitioner-plaintiff succeeded in a suit for specific performance and the decree of the trial court

grants specific performance of the agreement for sale so also a permanent injunction in favour of the petitioner-plaintiff restraining the defendants, who are respondents before this court, from obstructing an interfering with the petitioner’s possession in respect of the suit land/property.

3. Aggrieved by the judgment and decree of the civil court the respondents orig. defendants preferred Civil Appeal before the District Court and the lower appellate court has while admitting the appeal granted Stay to the judgment and decree passed by the trial court.

4. After having perused the judgment and decree of the trial court, in my view, there is much substance in the contention of Mr. Dani, the learned counsel for the petitioner, that when the lower appellate court stays the decree of the trial court, in such cases it cannot stay a decree for permanent injunction granted to protect possession of the petitioner-plaintiff. Grant of stay of such nature at this stage would amount to allowing the appeal itself. The learned counsel for the respondents orig. defendants submits that the entire

decree must be stayed otherwise the appeal is rendered infructuous.

5. In my view, the proper course is to Stay execution, implementation and enforcement of the decree for specific performance and execution of sale deed in pursuance thereof. However, the petitioner-plaintiff's possession cannot be interfered with when he has succeeded in proving so before the trial court. Until and unless the lower appellate court reverses that findings, it is not open to grant Stay.

6. The order under challenge is therefore set aside. It is clarified that the said Stay would operate only in so far as decree for specific performance.

7. The lower appellate court has expedited the hearing of the appeal and it is expected that it would decide the same accordingly. These observations will not in any manner influence the lower appellate court while deciding the appeal, which shall be decided on its own merits and in accordance with law. The petition stands disposed off accordingly.

(S.C.Dharmadhikari,J.)